

Approved: _____”/s/”
REBECCA MEIKLEJOHN
Attorney, Antitrust Division, United States Department of Justice

Before: HONORABLE
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	COMPLAINT: 00MAJ.1390
v.	:	Violation of
		18 U.S.C. § 371
MELVYN MERBERG,	:	
Defendant.	:	COUNTY OF OFFENSE:
		NEW YORK

----- x Filed: July 25, 2000

SOUTHERN DISTRICT OF NEW YORK, ss . :

ROBERT M. SILVERI, being duly sworn, deposes and says, that he is a Special Agent with the Federal Bureau of Investigation (“FBI”), duly appointed according to law and acting as such:

1. From at least as early as October 1987 until approximately April 1998, in the Southern District of New York and elsewhere, MELVYN MERBERG, the defendant, and others known and unknown did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud Odyssey House, Inc. (“Odyssey House”); obtain money and property from Odyssey House by means of false and fraudulent pretenses, representations, and promises; and deprive Odyssey House of its right to the honest services of certain of its employees, which scheme and artifice was executed by and through the use of the United States mails, in violation of Title 18, United States Code, Sections 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

2. In furtherance of the conspiracy and in order to effect the illegal objects thereof, the following overt acts were committed, among others, in the Southern District of New York:

a. On numerous occasions between October 1987 and April 1998, MELVYN MERBERG, a senior executive officer of Jitney, Ltd. ("Jitney"), gave cash to a co-conspirator, Aaron Lugo, the director of purchasing at Odyssey House, Inc. ("Odyssey House"). Odyssey House, a not-for-profit residential substance abuse treatment organization located in Manhattan, was one of Jitney's customers. MERBERG made the cash payments at Lugo's office in Manhattan, and at various restaurants in Manhattan. Initially, the cash represented a regular kickback of 5% of the value of orders that Odyssey House placed with Jitney that were actually delivered. Later, the payments were supplemented with Lugo's share, usually 40%, of the value of numerous false and fraudulent invoices that MERBERG and Lugo had caused Odyssey House to pay to Jitney.

b. Between approximately 1991 and March 1998, MELVYN MERBERG, the defendant, caused Jitney to issue to Odyssey House hundreds of false and fraudulent invoices totaling more than \$950,000. The invoices were false and fraudulent in that they billed for items, primarily food, that were never in fact delivered and were not intended to be delivered. Many of those invoices were sent to Odyssey House via the United States mail. Many of the checks issued by Odyssey House in payment for those invoices were sent to Jitney via the United States mail.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

The bases for deponent's knowledge and for the foregoing charge are, in part, as follows:

3. I am a Special Agent with the FBI. I have investigated the above-captioned case and

have spoken with other federal agents and witnesses. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including interviews I have conducted, my examination of reports and records, and my conversations with other law enforcement officers. Because I make this affidavit for the limited purpose of establishing probable cause, I have not set forth all aspects of this investigation. Where the contents of documents and the actions, statements and conversations of others are related herein, they are related in substance and in part, except where otherwise indicated.

4. Between December 1998 and the present, I and other agents of the FBI and the Internal Revenue Service (“IRS”) have interviewed Aaron Lugo, who has pled guilty to an Information charging him with conspiracy to commit mail fraud in connection with a kickback and embezzlement scheme at Odyssey House, as well as antitrust and tax charges, pursuant to a cooperation agreement. He is awaiting sentencing. Virtually all of the information provided by Lugo with respect to the defendant MELVYN MERBERG has been independently corroborated.

5. Lugo has disclosed that MELVYN MERBERG began to pay him cash kickbacks in approximately 1987, soon after Lugo obtained his position as a purchasing agent at Odyssey House. At that time, MERBERG’S company, Jitney, was the primary supplier of food and related items to Odyssey House. The kickbacks were usually paid monthly at Lugo’s office in Manhattan or at a nearby restaurant. They represented approximately 5% of the value of the orders that Lugo had placed with Jitney.

6. Beginning in approximately 1991, MELVYN MERBERG and Lugo further agreed to embezzle money from Odyssey House in the following manner: Lugo would cause Odyssey House to issue purchase orders to Jitney for food and other items that Jitney would not deliver.

MERBERG would then cause Jitney to issue corresponding invoices to Odyssey House. Lugo would cause Odyssey House to pay the false and fraudulent invoices by falsely certifying that the items identified on the invoices had been delivered. After receiving payment, MERBERG would usually pay Lugo 40% of the value of the invoices in cash and keep the remainder. MERBERG usually paid Lugo his share of the embezzlement scheme at locations in Manhattan.

7. According to Lugo and other administrative and clerical employees of Odyssey House who have been interviewed during the investigation of this matter, Jitney regularly sent its invoices to Odyssey House via United States mail and Odyssey House regularly sent its payments to Jitney by the same method.

8. I have examined a book with approximately 170 pages of handwritten notations that, according to MELVYN MERBERG'S spouse, Pamela Merberg, and two former Jitney employees, Santi Trimarchi and Joyce Deall, was maintained by or at the direction of MERBERG. The book lists payments, usually monetary, to certain customers of Jitney between June 1984 and August 1993. The book includes approximately 85 entries that appear to identify Jitney's total sales to Odyssey House for a period of time, usually one month, and list a second number, which is the first number multiplied by 5%. It also includes approximately 125 entries listing the purchase order or invoice numbers, or both, of purported transactions from March 1991 to July 1993 between Jitney and Odyssey House with a value of approximately \$130,000. Some of these entries are further identified by the words "dummy invoices." Some of these entries also contain notations referring to "Aaron," or an amount "due Aaron" or "pd to Aaron."

9. I have also spoken to MELVYN MERBERG'S spouse, Pamela Merberg, who was the owner and president of Jitney and worked at the business from approximately 1984 until

approximately 1997. She has been charged in an Information with, among other crimes, engaging in a conspiracy to commit mail fraud in connection with a kickback and embezzlement scheme at Odyssey House. She has stated that MERBERG stated to her on numerous occasions that he was paying kickbacks to Aaron Lugo at Odyssey House and embezzling money from Odyssey House with Lugo. She has also stated that she made entries in the book identified in Paragraph 8, and that the entries represented kickbacks paid to employees of customers of Jitney.

10. I have also reviewed reports compiled by Odyssey House in which that organization listed approximately 460 Jitney invoices it believed to be false and fraudulent, based on a number of criteria, including the fact that the persons who purportedly signed the invoices and thereby certified that the items on the invoices had been delivered were not affiliated with Odyssey House on the dates the signatures purport to have been made. The total value of these invoices is approximately \$900,000.

WHEREFORE, deponent prays that a warrant be issued for the arrest of the above-named individual, and that he be imprisoned or bailed as the case may be.

_____/s/_____
ROBERT M. SILVERI
Special Agent
Federal Bureau of Investigation

Sworn to before me this
25 th day of July, 2000

_____/s/_____
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK